

VIA FACSIMILE TO 202-501-1836 and 202-501-1450 and CERTIFIED MAIL

August 15, 2008

Karen Higginbotham
EPA Office of Civil Rights
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Steve Johnson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: *Don't Waste Arizona, Inc. (DWAZ) and Concerned Residents of South Phoenix (CRSP) v the Maricopa County Air Quality Department (MCAQD)*

Dear EPA Office of Civil Rights Director Higginbotham and Steve Johnson, EPA Administrator:

Don't Waste Arizona, Inc. is a non-profit environmental organization dedicated to the protection and preservation of the environment in Arizona. DWAZ is especially concerned about environmental justice and air pollution issues. DWAZ is headquartered at 6205 South 12th Street, Phoenix, AZ 85042, and may be reached at (602) 268-6110. DWAZ has members in the affected area. DWAZ has a long history of participating in air permit hearings and processes of the MCAQD. DWAZ has also filed several civil rights complaints against the MCAQD with the EPA Office of Civil Rights.

The Concerned Residents of South Phoenix (CRSP) is a non-profit environmental justice organization concerned about air pollution, emissions and releases of hazardous chemicals into the community, and disparate impacts caused by inept environmental bureaucracies. CRSP is headquartered at 819 West St. Kateri Drive, Phoenix, AZ 85041, and may be reached at (602) 268-4475. CRSP has members in the affected area. CRSP has a long history of participating in air permit hearings and processes of the MCAQD. CRSP has also filed several civil rights complaints against the MCAQD with the EPA Office of Civil Rights.

The Maricopa County Air Quality Department (MCAQD) has deliberately and intentionally violated Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's ("EPA") implementing regulation, 40 C.F.R. § 7.35, by discriminating on the basis of race in its administration of its air pollution program.

The MACQD recently had its director, Robert Kard, suddenly resign, and decided to conduct interviews for new candidates for the position. In preparing for this process,

MCAQD's interim director, Joy Rich, and her designee, Suzanne Gray, decided to recruit and invite certain stakeholders to participate in the interview process and even suggest questions to be asked of the various applicants. The interviews were set for May 2008.

When DWAZ and CRSP were made aware that this interviewing was happening in April 2008, DWAZ and CRSP asked in April 2008 to be able to participate, and were refused. DWAZ and CRSP were told orally by Suzanne Gray that those recruited and selected to participate on the interview panel "would represent our environmental justice and civil rights issues." Later, in writing, her designee, Trux Truxon, the "agency diversity manager" for the MCAQD, wrote "We do feel those selected represent the diverse/inclusive communities we serve."

The organizations that were invited to participate in the interview process representing community and environmental groups included the Joint Environmental Task Force, an unincorporated entity that does participate in air permit hearings and processes, but consists of elderly people in an area that is notably **not** populated by ethnic minorities; the Arizona Lung Association, which does not participate in air permit hearings and processes, and has no environmental justice policies; and the Sierra Club, which does not represent environmental justice communities, and also does not participate in air permit hearings and processes.

Despite their history of actively and proactively participating in air permit processes and testifying at hearings for air pollution permits administered by the MCAQD, and their history of complaints about civil rights violations by the MCAQD, DWAZ and CRSP were both denied the opportunity to participate.

Later, despite stonewalling for months by the MCAQD, DWAZ and CRSP were finally successful on July 30, 2008, in viewing the public records that were the subject of the interviews, and discovered that none of the questions promulgated by the Joint Environmental Task Force, the Arizona Lung Association, the Sierra Club, or any other participant on the interview panel, for the candidates being interviewed, even the MCAQD staff, ever mentioned or breached the subject of civil rights, disproportionate, adverse impacts by the MCAQD's administration of its air pollution program on ethnic minority communities, or environmental justice.

Further, the review of these public records indicated that the applicant offered the position decided against the job, so the interviews will commence again on August 29, 2008, and the MCAQD still will not allow DWAZ and/or CRSP to be included on the interview process.

The MCAQD's failure to allow the participation of DWAZ and CRSP on the interview panel creates a disparate impact on the ethnic minority communities represented by DWAZ and CRSP. These ethnic minority communities represented by DWAZ and CRSP already have the highest levels of particulate matter in Maricopa County, with levels often exceeding the federal NAAQS, and they also have the highest emissions of hazardous air pollutants in Maricopa County. With so much of the MCAQD policy

regarding environmental justice and disparate impacts on ethnic minority communities being at the determination and/or whim of the agency director, being able to ask questions to the potential agency director about his/her thoughts and position on this is vital. The current MCAQD policy regarding environmental justice leaves the entire decision regarding evaluating environmental justice concerns to the agency director.

By locking environmental justice organizations that normally and regularly participate in MCAQD permit processes and hearings out of the interview process, and inviting in groups that are not concerned about environmental justice, the MCAQD makes it clear that its racist, discriminatory policies are systemic, deliberate, intentional, and entrenched, and that the agency is likely to not make environmental justice and disparate impact an issue or a concern in its hiring and day to day operations and policy.

The discrimination by MCAQD is intentional and informed.

EPA's Program to Implement Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 is a federal law that prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal financial assistance. Title VI itself prohibits intentional discrimination.

The Supreme Court has ruled, however, that Title VI authorizes federal agencies, including EPA, to adopt implementing regulations that prohibit **discriminatory effects** as well as intentional discrimination. Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative."

I. PARTIES

A. Complainants

Don't Waste Arizona, Inc. (DWAZ), and Concerned Residents of South Phoenix, (CRSP) are environmental justice organizations with affected members residing in west and South Phoenix, are filing this complaint against the MCAQD.

The Maricopa County Air Quality Department (MCAQD) administers air pollution permits in Maricopa County. The MCAQD, as a recipient of federal funds from EPA, is subject to the requirements of Title VI of the Civil Rights Act.

II. RIPENESS

This complaint is timely filed since the MCAQD conducted its discriminatory actions starting in April 2008, still do not comply with the requirements of Title VI, the air pollution violations for the NAAQS particulate standards in the overwhelmingly ethnic

minority communities represented by DWAZ and CRSP are continuing, and the MCAQD's administration of the air pollution programs is still a failure, and deliberately and intentionally creating a disparate impact.

The failure of the MCAQD and ADEQ to properly administer their respective air pollution programs is causing, and has caused, a disproportionate, adverse effect on the low-income, ethnic minority community of South Phoenix and west Phoenix.

The MCAQD has been provided specific notice of the problems and deficiency; yet has not remedied the problem, despite a fresh opportunity.

Claims

A. Title VI

Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d.

The MCAQD, a direct recipient of federal financial assistance from EPA, has violated Title VI as implemented through EPA's regulations by failing to properly administer its air pollution programs in a way as to not discriminate or create a disparate impact on ethnic minority communities.

EPA must ensure that recipients of EPA financial assistance are not subjecting people to discrimination. In particular, EPA's Title VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

The failure of the MCAQD to properly administer its air pollution programs, as aforementioned, has had severe environmental and public health consequences in west and South Phoenix, which has the highest asthma rates in Maricopa County. There have been many exceedances of the NAAQS for particulate matter in both west and South Phoenix, all in the midst and/or proximate these overwhelmingly ethnic minority communities.

All complainants must show is that when applied in a particular manner, the MCAQD's "methods of administering its air pollution programs" yield a discriminatory outcome. As the abovementioned sections demonstrate, the MCAQD's method of administering its air pollution programs has resulted in discriminatory impacts throughout the low-income, ethnic-minority communities of west and South Phoenix.

The effect of MCAQD's administration of its air pollution program is clear: People of color will bear disproportionate risks and impacts from air pollution, yet the MCAQD will not properly administer its air pollution programs and comply with applicable statutes as mentioned before in this complaint; and the MCAQD will not provide a means to decrease risks and impacts to this affected community, even by allowing environmental justice and civil rights organizations to participate in selecting a new agency director.

The MCAQD has administered its air pollution program in such a way as to discriminate against people based on race, color, and national origin, in violation of Title VI.

Remedies

In order to provide effective remedies for the patterns of discrimination described in this complaint, the complainants request that EPA:

- Permit complainants to initiate and engage in active, collaborative investigation of the foregoing allegations, including the submission of written interrogatories to MCAQD;
- Provide complainants with copies of all correspondence to or from the respondent throughout the course of the EPA's investigation, deliberation and disposition of this complaint;
- Sue to compel compliance with the law, to the extent that imposition of the foregoing remedies proves in any way to be ineffectual;
- Terminate its assistance to the MCAQD, pursuant to 40 C.F.R. §7.25, if the MCAQD fail to implement the above requested changes.

Further, in order to provide effective remedies for the patterns of discrimination described in this complaint, the complainants request that EPA require that, as a condition of continuing to provide federal financial assistance, that MCAQD:

- Institute a vigorous agency-wide program to educate staff at all levels to ensure environmental justice is examined and utilized in all permit decisions;
- Institute a vigorous agency-wide program to ensure that policies adopted by the agency do not create a disparate impact on ethnic-minority communities; and
- Ensure that environmental justice groups always be allowed to participate in processes that other community and environmental groups are invited to participate in.

Conclusion

As this complaint makes clear, the low-income, ethnic minority community of west and South Phoenix, Arizona, typifies the low-income and/or communities of color burdened in Arizona by disproportionate adverse environmental impacts because of the MCAQD's administration of its air pollution programs.

The discriminatory impact created and sanctioned by the MCAQD's actions are a clear violation of Title VI as implemented by EPA regulations. Because the MCAQD receives federal funding from EPA, it is subject to Title VI as implemented by EPA regulations. This complaint is timely filed since the MCAQD's discriminatory actions occurred less than 180 days ago, and the MCAQD still do not comply with the requirements of Title VI, the air pollution violations for the NAAQS particulate standards are continuing, and the MCAQD's administration of its air pollution programs is still a failure as described..

Don't Waste Arizona, Inc., Concerned Residents of South Phoenix, and the affected members of both organizations look forward to an active investigation by EPA.

The complainants will be pleased to file further documentation of these claims as needed within the next few weeks, once EPA has specified to whom the documentation should be sent, and what further documentation is needed.

Sincerely,

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